

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

KATHLEEN SULLIVAN, et al.,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN  
FRANCISCO, et al.,

Defendants.

) Case No.: C06-04686 JSW

)

) **PLAINTIFFS' MOTION IN LIMINE NO.**  
) **2 TO EXCLUDE OR LIMIT THE**  
) **TESTIMONY OF DEFENSE EXPERT,**  
) **ALEXANDER JASON**

)

)

) Trial Date: December 2, 2013

) Trial: 8:00 a.m.

) Pretrial Conf.: April 1, 2013

) Time: 2:00 p.m.

) Courtroom 11, 19<sup>th</sup> Floor

) The Honorable Jeffrey S. White

)

)

# EXHIBIT 2

DEPOSITION OF ALEXANDER JASON - CONFIDENTIAL

1 I have H marked one through seven.

2 Q. Okay. Now, looking at H1, is that -- what does  
3 that depict?

4 A. That is an area of the eyeglass case that has  
5 transfer blood on it.

6 Q. And do you know if that's a -- do you know  
7 which side of the eyeglass case that is?

8 A. That's the underside, the bottom of the  
9 eyeglass case.

10 Q. Okay. Given that it looks like there was  
11 transfer blood on both ends of the eyeglass case, do you  
12 know which end that is?

13 A. I do not.

14 Q. And do you have any independent recollection of  
15 what end that is?

16 A. No, I don't.

17 Q. Okay. Moving to H2.

18 A. H2 shows two, slightly out of focus, two blood  
19 deposits which are sub one millimeters, small one  
20 millimeters, very small blood deposits.

21 Q. Are those spatters?

22 A. Yes, they are.

23 Q. Could they be anything other than spatters?

24 A. They could be, but they look like bloodspatter  
25 to me.

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1 Q. Okay. H3?

2 A. H3 is a single drop, a single deposit, single  
3 bloodspatter.

4 Q. Okay. Could that be anything other than  
5 bloodspatter?

6 A. It could be, but it looks like bloodspatter.

7 Q. H4.

8 A. Oh, gosh, I missed one. I'll make this the  
9 last one.

10 Q. That's fine. I don't have them in any  
11 particular order. That's fine.

12 A. (Marking on photographs.) So we are at H4  
13 now.

14 Q. I'm at the --

15 A. What was the last H that I -- (Examining  
16 photographs.) Yeah, it was H4 -- H3.

17 Q. We should be on H4 now.

18 A. H4 is the area of the underside of the bottom  
19 of the eyeglass case that has transfer blood.

20 Q. Okay.

21 A. H5.

22 Q. Hold on.

23 Do you know what side of the case that is?

24 A. I do not.

25 MR. LOEBS: Side, you mean left or right?



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1 MR. NISENBAUM: Right, left or right.

2 Q. And the next in order?

3 A. H5 is showing two blood, blood spatter deposits  
4 without a scale. So it's not very useful.

5 Q. Okay.

6 A. I just gave you all my pictures.

7 Q. Could those be anything other than spatter?

8 A. They could be, but they look like bloodspatter  
9 to me.

10 Q. Okay. Next in order?

11 A. H6 is an area with a scale.

12 Once again, this is the bottom of the eyeglass  
13 case. And it has two, perhaps a third blood spatter  
14 deposit. They are very small consistent with gunshot  
15 wounds.

16 Q. Could that be anything other than spatter?

17 A. It could be, but it looks to me like  
18 bloodspatter.

19 Q. Next in order?

20 A. H7 is an area of transfer blood deposits. And  
21 I don't know what side, left or right, this is. But  
22 this is from the underside of the bottom of the eyeglass  
23 case.

24 Q. Could that be anything other than blood?

25 A. It could be, but it looks like bloodspatter or

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1 blood -- transfer blood deposits, to me.

2 Q. H8?

3 A. H8 is an area resembles another picture. It  
4 might be the same.

5 (Examining photograph.) Yeah, this is the same  
6 area as H6 showing a blood spatter deposit, very, very  
7 small blood spatter deposit.

8 Q. Okay.

9 MR. LOEBS: Can we take a break for a few  
10 minutes, Ben?

11 MR. NISENBAUM: Sure.

12 (WHEREUPON, a brief recess was taken.)

13 MR. NISENBAUM: Q. Now, Mr. Jason you reviewed  
14 the coroner's report in this case?

15 A. I did.

16 Q. Okay. I am going to hand you a copy of the  
17 coroner's report, and if you can look it over. Do you  
18 know if this is the report that you reviewed in this  
19 case?

20 A. (Examining documents.)

21 Q. And I am going to mark this as next in order.

22 A. Yes, it appears to be.

23 (WHEREUPON, Plaintiff's Exhibit I was  
24 marked for Identification, and is  
25 attached, hereto.)

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1 MR. NISENBAUM: Q. Okay. You examined  
2 Mr. Sullivan's pants; is that right?

3 A. Yes.

4 Q. Okay. And were his pants bloody?

5 A. Yes, they had blood on them.

6 Q. And I take it, as of May 3- -- was it May 30  
7 that you examined his pants in 2008 -- I am sorry --  
8 April 30.

9 A. April 30.

10 Q. Okay. April 30, 2008, I take it, the blood was  
11 dry?

12 A. Yes.

13 Q. Did you examine the pockets of the pants?

14 A. Inside the pockets?

15 Q. Did you examine the pockets at all?

16 A. I did not -- other than to note it that they  
17 were not -- that they were empty. But I, I smoothed the  
18 pants out to photograph it. But I did not look in the  
19 pockets.

20 Q. Do you know whether or not the pockets were  
21 bloody?

22 A. The interior of the pockets, no, I did not look  
23 inside, no.

24 Q. Okay. In reviewing the coroner's report, did  
25 you note whether or not any items retrieved from



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1 Mr. Sullivan's pockets were bloody?

2 A. I don't remember. I can look at it now.

3 Q. I will direct you to its Page One of the  
4 report. It's a few pages into the Exhibit, CCSF/ESPI  
5 001469, Preliminary Examination.

6 A. (Examining documents.) Okay. Yeah,  
7 blood-stained piece of paper in the right front pocket.  
8 And in the right back pocket is a blood-stained  
9 probation department business card. In the left front  
10 pocket are several blood-stained white tissues. In the  
11 left back pocket of the pants are napkins. It doesn't  
12 say anything about blood on that. But, yes, there were  
13 some bloody objects in several pockets.

14 Q. Okay. Do you know if the transfer that you  
15 observed -- strike that.

16 Do you know if the transfer bloodstains that  
17 you observed on the eyeglass case could have come from  
18 one of those bloody pockets?

19 MR. LOEBS: Objection. Vague and ambiguous.  
20 Incomplete hypothetical.

21 THE WITNESS: Well, we have to go back.

22 The type of spatter deposits on a glass case  
23 are not consistent with it having been in the pockets  
24 during the shooting.

25 Is that what you asking me?

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1 MR. NISENBAUM: Q. That's all I'm asking.

2 I am asking you, you said that there were two  
3 transfer stains on the pocket -- not on the pocket.  
4 Strike that.

5 You said there were two transfer stains on the  
6 bottom of the eyeglass case, one on either side,  
7 correct?

8 A. Correct.

9 Q. Okay. Now, if those two transfer stains, could  
10 either of those stains, transfer stains have occurred --  
11 strike that.

12 Could either of those two transfer stains have  
13 happened when the -- if the eyeglass case was in the  
14 pocket, one of Mr. Sullivan's pockets?

15 MR. LOEBS: Object to the question. It's an  
16 incomplete hypothetical.

17 Are you asking him to assume that there were no  
18 other stains on the pocket?

19 MR. NISENBAUM: I am asking if that was  
20 possible.

21 MR. LOEBS: You are asking him to assume that  
22 there were no other spatter mark stains on the glass  
23 case, right?

24 MR. NISENBAUM: I am just asking as to the  
25 stains, without regard to the spatter marks.



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1 THE WITNESS: From the transfer marks alone, I  
2 think it's unlikely that it could have been caused by  
3 being in the pocket. I'd have to look at the pockets.  
4 I would expect there to be -- well, if it was in the  
5 right front pocket, I would expect there to be a lot  
6 more blood on the glass case than it was.

7 MR. NISENBAUM: Q. Okay. And what is that  
8 based on?

9 A. The amount of blood that's on that area. The  
10 right front pocket would have a lot of blood on it  
11 within it. And it's very little blood transfer on the  
12 glass case, really, for the amount of blood in the area,  
13 especially in that right front pocket area.

14 Q. Did you review any photographs of any items  
15 that were removed from the glasses case?

16 A. I looked at all of them, yes.

17 Q. Okay. And at this point I got my pictures  
18 somewhat out of order, but if you will bear with me.

19 A. I'd like to make a clarification, if I may.

20 Q. Sure.

21 A. Before the break you asked me about -- I forget  
22 the exact question but it was something like Is it  
23 possible that the glass case, the eyeglass case was in  
24 the pocket, in one of the pockets? And I'm not sure how  
25 I answered that. But what I wanted to say is I don't

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1 believe glass -- I believe the physical evidence is  
2 consistent with the glass case not being in the pocket  
3 during the shooting, being in any pocket during the  
4 shooting.

5 Q. And that's because of the mark that you  
6 observed on it that you say are -- what's the word for  
7 it?

8 A. Spattered?

9 Q. Yes, spattered.

10 A. Yeah, marks, blood deposits, yeah. Yes.

11 Q. You haven't done any testing of the blood  
12 deposit, though, have you? We already asked that.

13 A. You already asked me that.

14 Q. Okay.

15 We'll make this exhibit next order, CCSF/ESPI  
16 000957.

17 (WHEREUPON, Plaintiff's Exhibit J was  
18 marked for Identification, and is  
19 attached, hereto.)

20 MR. NISENBAUM: Q. If you can take a look at  
21 Exhibit J and tell me if you have seen that before.

22 A. (Examining photographs.) Yes, I have.

23 Q. What is it?

24 A. This is the picture of the decedent at the  
25 medical examiner's office lying on a gurney still

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1 clothed and his hands back.

2 Q. Now, does he appear to be lying on some type of  
3 plastic sheeting?

4 A. Yes, he does. I think that's the opened body  
5 bag.

6 Q. Are there marks on that opened body bag?

7 MR. LOEBS: Objection. Vague and ambiguous.  
8 What do you mean by marks?

9 MR. NISENBAUM: Q. Well, is there something  
10 that's not plastic on that opened body bag?

11 A. It appears to be blood.

12 Q. Now, did you examine that body bag?

13 A. No.

14 Q. Do you know from that body bag, from looking at  
15 it, do you know would you be able to differentiate  
16 between spatter and the drops that are on the body  
17 bag?

18 MR. LOEBS: Object as vague and ambiguous,  
19 incomplete.

20 THE WITNESS: If I have a chance to examine the  
21 bag then on that I think I could, yes.

22 MR. NISENBAUM: Q. We will come back to this.  
23 At some point we will come back to that when I can find  
24 the photographs.

25 A. Okay.



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1 Q. All right. Now, April 30, 2008, you were at  
2 2 Garces Drive?

3 A. Yes.

4 Q. And who was with you?

5 A. Mr. Lobes and Officer Keesor, Officer Alvis,  
6 Officer Morgado, Officer Oshita, and Doctor, Dr.  
7 Mohandie, M-o-h-a-n-d-i-e, and doctor, I forget her  
8 name. If Mr. Lobes can remind me.

9 Q. Dr. Karem?

10 A. Dr. Karem.

11 THE REPORTER: I'm sorry?

12 THE WITNESS: K-a-r-e-m. And I believe that  
13 was all.

14 MR. NISENBAUM: Q. And did you have any  
15 discussion with anyone at 2 Garces about whether or not  
16 this was supposed -- whether or not this shooting was a  
17 suicide by cop.

18 A. I never discussed that with anybody.

19 Q. Dr. Karem never told you that she thought this  
20 was a suicide by cop?

21 A. I never, other than meeting and greeting her  
22 and a few questions -- I mean a few interchanges like  
23 that, I never discussed the case with her.

24 Q. Okay. All right. And your purpose of, of  
25 April 30, 2008, at 2 Garces Drive was what?

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1       A.    To do a demonstration to use the officers and  
2   have them show me exactly where they were in the attic  
3   and where the decedent was, and then to photograph their  
4   particular points of view from their locations in the  
5   attic.

6       Q.    By the way, if you can move the exhibits back  
7   here for the Court Reporter.

8       A.    (Handing documents to Counsel.)

9       Q.    And what kind of camera did you use to take  
10  photographs?

11      A.    Yes, I used a Nikon D300 digital camera.

12      Q.    And you had video as well?

13      A.    No.

14      Q.    Okay. And your intention was to have the  
15  officers essentially run through what occurred in the  
16  incident?

17           MR. LOEBS: Objection. Misstates his  
18  testimony.

19           THE WITNESS: I just had the officers to stand  
20  in their locations. And we didn't act out the entire  
21  event. We just we had one officer who was somewhat  
22  similar to the height and weight of the decedent. And  
23  he sat in the location where the decedent was  
24  photographed the day of the shooting where his body was.  
25  And then the officers took their positions to -- they

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1 took their positions where they were located during  
2 the -- immediately prior to the shooting.

3 MR. NISENBAUM: Q. Okay. So this focused  
4 specifically on where the officers were immediately  
5 prior to the shooting, right?

6 A. That's right.

7 Q. Okay. I was trying to narrow that period.

8 And who was the officer who took Mr. Sullivan's  
9 location?

10 A. Let's see. I have it in my notes here.

11 (Examining documents.)

12 I don't have his name down here. And, also,  
13 Don Cameron was there. He is a police practices  
14 expert.

15 Q. Okay.

16 A. I don't have his name down here.

17 Q. Do you know if it was one of the defendants in  
18 the case who assumed Mr. Sullivan's position?

19 A. I believe it was not. It wasn't Alvis or  
20 Keesor or Oshita. It wasn't one of the shooting  
21 officers, I know that.

22 Q. Oshita was not a shooting officer, was he?

23 A. No.

24 Q. Okay.

25 A. It wasn't one of the officers who would have



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1 been in -- who was in the attic at the time of the  
2 shooting.

3 Q. To your knowledge, the only officer present in  
4 the attic with you at 2 Garces who was not in the attic  
5 at the time of the shooting was Officer Oshita; is that  
6 correct?

7 MR. LOEBS: Misstates his testimony.

8 THE WITNESS: Officer Oshita, my understanding  
9 was he was in the attic partially during the shooting.

10 MR. NISENBAUM: Q. Okay. There were four  
11 officers with you, correct?

12 A. It was Keesor, Alvis, Oshita -- Keesor, Alvis,  
13 Oshita and Morgado. There were four. And then the  
14 fifth person assuming the role of the decedent, position  
15 of the decedent.

16 Q. Is it fair to say the fifth person was not an  
17 officer, the one who assumed the decedent's role?

18 A. I believe he was, but I -- he wasn't wearing a  
19 uniform. So I don't know for sure. I believe he was an  
20 officer.

21 Q. Now, looking at your notes -- let me go back to  
22 this. We have --

23 A. (Examining documents.)

24 Q. And I am looking at page three of Exhibit A,  
25 which is dated -- oh, I am sorry. This is actually

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1 dated 17 April 2008.

2 A. Yes.

3 Q. Is that the date that you were in the attic?

4 A. Yes.

5 Q. Okay. And again, "Exam of scene at 2 Ceres."  
6 You mean Garces?

7 A. I mean Garces.

8 Q. Okay. And it states here that -- well, let me  
9 ask you this. Of the people you have list- -- of the  
10 names you have listed here, are those all the people who  
11 were present?

12 A. There was -- I left out Dr. Karem's name on the  
13 bottom.

14 Q. Okay.

15 A. And then I left out the name of the person who  
16 assumed the position of the decedent.

17 Q. Okay.

18 A. Other than that, I think that was all.

19 Q. Is it your understanding that the person who  
20 assumed the position of the decedent was not present at  
21 the time at 2 Garces at the time the shooting  
22 occurred?

23 A. That's my understanding.

24 Q. Okay. And the purpose of this was -- well,  
25 strike that. I already asked that.

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1           Now, is it fair to say that one thing you did  
2 not do was, was have the officers reenact their movement  
3 through the attic up and to the final point of the  
4 shooting?

5           A.   That's correct. I didn't ask them, nor did  
6 they do any movement other than to assume their  
7 locations.

8           Q.   Okay. Now, and from that you prepared a  
9 certain computer model?

10          A.   Well, not from that. But from my measurements  
11 and photographs of the scene prior to that, I prepared a  
12 computer model.

13          Q.   Let me ask you this.

14               Let's mark this as next in order.

15               **(WHEREUPON, Plaintiff's Exhibit K was**  
16               **marked for Identification, and is**  
17               **attached, hereto.)**

18          MR. NISENBAUM: Q. Can you tell me what  
19 Exhibit K reference?

20          A.   K is a rendering that I did of a computer model  
21 that I created based on the measurements of the scene,  
22 the attic, specifically, and of the condo apartment in  
23 general. And then there are blue objects. There are  
24 four blue objects and one green object. The green  
25 object represents the decedent and the blue object



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1 represents the officers who were in the attic at the  
2 time of the shooting.

3 Q. Okay. Now, can you tell me which, which blue  
4 object represents which officer at the time of the  
5 shooting?

6 A. Yes. Should I label them?

7 Q. Yes, if you can label them, that would be  
8 great.

9 A. (Marking on photographs.) I labeled them.  
10 And in addition to that I annotated the decedent.

11 Q. Now, it looks like you have off of the icons  
12 labeled Morgado and Alvis appear to be vertical, while  
13 the --

14 A. Oh, wait a second. I left out Keesor. I'm  
15 sorry.

16 Oh, yeah, I got --

17 MR. LOEBS: It's hard to tell.

18 MR. NISENBAUM: Q. The icons labeled Morgado  
19 and Alvis appear to be upright, while the icons  
20 labeled --

21 A. -- Keesor.

22 Q. While Keesor and the DEC, decedent, appear to  
23 be horizontal?

24 A. Well, the Keesor one is horizontal. The  
25 decedent one -- I am using these general shapes to

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1 represent the body positions.

2 If you look closely, it's hard to tell from  
3 that, but it shows him sitting down with his legs in  
4 front of him flat on the attic floor and then his torso  
5 upward.

6 Q. I see.

7 A. That's what it supposed to represent.

8 Q. Okay. And the, the vertical icon on the bottom  
9 left, is that Oshita?

10 A. That's Oshita, and he is half in and half  
11 out.

12 Q. Okay. Where Oshita is, is that where the  
13 attic access is?

14 A. Yes.

15 Q. Okay. And to your understanding that below  
16 Oshita is kind of is a closet?

17 A. Yes.

18 Q. And are these intended to express any  
19 particular height of Officer Morgado or Alvis?

20 A. It's just generally, but not, not trying to  
21 represent their height, their scale height, no.

22 Q. Okay. Do you know how far from the decedent  
23 Officer Alvis was in this?

24 MR. LOEBS: Objection. Vague and ambiguous as  
25 to what portion of the body you are measuring from.

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1 MR. NISENBAUM: Q. Approximately.

2 A. How far Morgado is from Alvis?

3 Q. As Alvis is from the decedent?

4 A. Oh, from the decedent.

5 MR. LOEBS: Objection. Vague and ambiguous as  
6 to what portion of the body you are measuring from.

7 MR. NISENBAUM: Q. You can tell me what  
8 portion of the body you are measuring from.

9 A. Well, his feet are before him. So they are  
10 closer to her, to Alvis than his head. So, and she is  
11 standing upright, as depicted there. So, if you measure  
12 from her nose and from her outstretched hands to her gun  
13 you'd get, you'd get different spaces. But, I'd say, if  
14 you go from head to head, that is, from her head to his  
15 head, I would say there is two, four, six, seven, eight  
16 feet, something like that. Six to eight feet.

17 Q. Did you, when you had the re-enactment done,  
18 did you take measurements from head to head?

19 A. No.

20 MR. LOEBS: Objection. It misstates his  
21 testimony.

22 MR. NISENBAUM: Maybe I am using the wrong word  
23 there.

24 Q. When you had the positioning done, did you take  
25 measurements between the, between -- well, did you take



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1 measurements between Officer Alvis and the person who  
2 played the role of the decedent?

3 A. No.

4 Q. Did you take measurements of any of the  
5 officers relative to the decedent?

6 A. No.

7 Q. Did you take measurements of the officers  
8 positioning relative to any location?

9 A. No. I took no measurements, no.

10 Q. Okay. So it's an estimation that Alvis head to  
11 head was six --

12 A. Was six to eight feet, yeah.

13 Q. Okay. And the decedent, as you understand it,  
14 was, was in a somewhat seated somewhat lying position?

15 A. That's how he was found and, yes, that's how he  
16 was described as being, yes.

17 Q. Do you know what the total length of the attic  
18 is?

19 A. I don't remember right now. But I think  
20 it's -- in that direction that you are indicating there,  
21 from vent to vent?

22 Q. Yes.

23 A. I think it's 23 feet. But that's just from  
24 memory.

25 Q. And is the spaces between the joists, are the

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1 spaces uniform, to your knowledge?

2 A. The spaces are the same except for bay one and  
3 eleven. When I say bay, I am talking about this area  
4 here. Here and here, these are more narrow than these.  
5 (Indicating.) These are all the same.

6 Q. Okay. And the ones that are all the same, what  
7 is the distance between the joists?

8 A. I don't remember.

9 Q. Do you know if it's more or less than three  
10 feet?

11 A. I think it's less than three feet.

12 Q. Okay. And when the positioning was done at any  
13 point in time did you have the person who played the  
14 decedent point to -- point an arm at Officer Alvis?

15 A. No.

16 Q. Now, were you able to make any determinations  
17 as to the visibility of the conditions in the attic?

18 A. Yes.

19 Q. And do you intend to express an opinion about  
20 that?

21 A. Yes.

22 Q. Okay. And that is -- maybe you can direct me  
23 to the area where you intend to express an opinion. It  
24 may be page five of seven, I'm not certain.

25 A. (Examining documents.)

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1 MR. LOEBS: Can I have that question back? I  
2 am sorry.

3 MR. NISENBAUM: Maybe he can direct me to the  
4 exhibit.

5 MR. LOEBS: To the portion of the --

6 MR. NISENBAUM: Page five of seven, I am not  
7 certain.

8 MR. LOEBS: I didn't -- I just don't understand  
9 the question.

10 MR. NISENBAUM: Q. Okay. The question is can  
11 you direct me to the area of your report where you  
12 intend to express an opinion with respect to visibility,  
13 visibility conditions.

14 A. Yeah, on page six of seven, the bottom point  
15 says "Officer Keesor had the only viewing location which  
16 allowed a view of the decedent's right hand when raised  
17 above the floor joists." And then it describes the  
18 other positions and their, their views.

19 Q. I see.

20 Now, do you know what portion of the decedent  
21 was visible to Alvis from her position?

22 A. First, you have to -- before I can answer that,  
23 you have to realize that she was not locked in one  
24 position. She was locked in one location or she  
25 remained in one location, but she was moving her head



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1 from side to side to get, to get either side of the  
2 intervening object. So she had different views. But  
3 she could see his head sometimes. And he also was  
4 moving, by her description. So she had some view of his  
5 head. But I think it's pretty well designed or  
6 illustrated in the pictures that I had from the shooting  
7 locations, which you have somewhere.

8 Q. Certainly do.

9 Make this next in order.

10 (WHEREUPON, Plaintiff's Exhibit L was  
11 marked for Identification, and is  
12 attached, hereto.)

13 MR. NISENBAUM: Q. And the next exhibit has  
14 been marked Exhibit L. Can you tell me what Exhibit L  
15 represents?

16 A. Yeah. (Examining photographs.) Exhibit L is a  
17 picture taken inside the attic with Officer Alvis in the  
18 location where she was during the shooting. And it's  
19 just a picture of her standing holding her flashlight  
20 and her right arm outstretched as if she were holding a  
21 gun.

22 Q. And then I have some photographs. And I'm  
23 going to show you the next, next seven photographs. If  
24 you can tell me what these are intended to represent.

25 A. Should I number these?

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1 Q. Yes, if you can.

2 A. Is this going to be part of the --

3 Q. It will be --

4 A. M?

5 Q. Well, first, let me ask you this. Are these  
6 the next series of photographs intended to represent  
7 what was visible from Alvis' position?

8 MR. LOEBS: Wait a second. I don't, I don't --  
9 it's compound and a vague question.

10 You have 10, like, 20 -- how many, 15  
11 photographs?

12 MR. NISENBAUM: There is a series of  
13 photographs and I am just --

14 THE WITNESS: These photographs do not  
15 represent Alvis' position or viewpoint.

16 MR. NISENBAUM: Q. Okay. You did take  
17 photographs from her position that were intended to show  
18 her viewpoint, correct?

19 A. Yes, I did.

20 Q. Given in the stack of documents in the copy of  
21 photographs that I, that I made for you that you took,  
22 can you show me the photographs that are intended to  
23 represent her viewpoint?

24 MR. LOEBS: You want these back, Ben?

25 MR. NISENBAUM: Yeah, please.

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1 THE WITNESS: (Examining photographs.) Yeah,  
2 there are two pictures here, which generally represent  
3 her viewpoint from either side of the intervening  
4 object. These are -- should I mark these?

5 MR. NISENBAUM: Q. Let's make these -- if  
6 these are intended to represent her viewpoint, let's  
7 make them L1 and L2.

8 A. (Marking on photographs.) I've marked them L1  
9 and L2 I will hand them to the Court Reporter.

10 Q. Thank you.

11 (WHEREUPON, Plaintiff's Exhibit L1 and  
12 Exhibit L2 was marked for Identification,  
13 and is attached, hereto.)

14 THE WITNESS: So this is not going to confuse  
15 people, we have a L, and a L1 and a L2. And this should  
16 be a L0. (Indicating.)

17 MR. NISENBAUM: Q. Okay. I am going to ask  
18 you one more question.

19 Did you take any photographs that were intended  
20 to represent the decedent's view?

21 A. No.

22 Q. Okay.

23 A. Not with the officers present.

24 Q. At any point in time did you take any  
25 photographs that were intended to represent the



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1 decedent's view?

2 A. No, not, not, not with that intention.

3 Q. Okay. So Looking at L1, what is L1?

4 A. (Examining photograph.) L1 is a photograph  
5 taken inside the attic from Officer Alvis' location  
6 where her head, where her eyes were, looking at another  
7 person who is seated in the location where the decedent  
8 was located.

9 And L1 shows from the left side of an  
10 intervening object, pipe and/or wooden support.

11 Q. Okay. Now, what time of day were you at 2  
12 Garces?

13 A. This was probably in the late afternoon, maybe  
14 4:00 o'clock, something like that.

15 Q. Okay. And is L1 intended to represent the  
16 similar lighting conditions in the attic as Alvis had at  
17 the time of the incident?

18 A. Yes.

19 Q. And it appears that the decedent is illuminated  
20 by some type of light in L1; is that correct?

21 A. That's correct.

22 Q. And whose light or what type of light?

23 A. The lights that were used were the same  
24 flashlights used by the officers who had flashlights. I  
25 had them use the same flashlights.

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1 Q. All right. And L2 is similar to L1 but  
2 slightly different?

3 A. Slightly different, if you moved your head to  
4 the right slightly on the right side of the intervening  
5 air duct.

6 Q. Let's go to K.

7 A. (Examining photographs.)

8 Q. Do you recognize Exhibit K?

9 A. Is this K?

10 Q. Well, I'm sorry. It's going to be M -- strike  
11 that. I think it's Keesor, so.

12 Okay. Do you recognize Exhibit M?

13 A. (Examining photograph.) Yes, I do.

14 Q. And what is Exhibit M?

15 A. This is a picture taken from inside the attic  
16 showing Officer Keesor in his described location holding  
17 a flashlight. And it also shows Officer Oshita  
18 partially, and partially Officer Morgado.

19 MR. NISENBAUM: Make this Exhibit M.

20 (WHEREUPON, Plaintiff's Exhibit M was  
21 marked for Identification, and is  
22 attached, hereto.)

23 MR. NISENBAUM: Q. And going through your  
24 stack of photographs, can you show me if there are any  
25 photographs that are intended to depict Officer Keesor's

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1 point of view?

2 A. (Examining photographs.) Yes, I have a  
3 photograph here (indicating), which depicts Officer  
4 Keesor's view.

5 Q. Do you have other photographs that are intended  
6 to depict his view?

7 A. No.

8 MR. NISENBAUM: Make this M1.

9 (WHEREUPON, Plaintiff's Exhibit M1 was  
10 marked for Identification, and is  
11 attached, hereto.)

12 MR. NISENBAUM: Q. Going back to Exhibit L.  
13 Do you know if the -- do you have an understanding that  
14 there was, like, a fluffy type of insulation in the  
15 attic?

16 A. Yes.

17 Q. At the time of the incident, correct?

18 A. Yes.

19 Q. And similar to the fluffy type of insulation  
20 that, that you can see somewhat in Exhibit L2?

21 A. Yes.

22 Q. Do you know if the officer who is -- I don't  
23 want to say plain, but the officer who was, essentially,  
24 taking Asa Sullivan's position, do you know whether or  
25 not in this, in these photographs is he sitting in an



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1 area where there is fluffy insulation?

2 A. Yes, he is.

3 Q. Okay. And from that, from Alvis' viewpoint is  
4 the fluffy insulation visible?

5 A. From?

6 Q. Alvis' viewpoint.

7 A. Yes. Some of it is, yes.

8 Q. Okay. I think I asked you this already. But  
9 let me be clear. Let me make sure.

10 Did you ever have the decedent make, or the  
11 person who played the role of Asa Sullivan, make the  
12 motion that Officer Keesor claimed to have observed?

13 A. No.

14 MR. LOEBS: Object. Vague and ambiguous what  
15 you mean played the role of.

16 MR. NISENBAUM: I don't know how else to put  
17 it, Blake.

18 Q. Assume the position of the decedent in the  
19 attic?

20 MR. LOEBS: I think that's more accurate of his  
21 testimony, than saying played a role.

22 MR. NISENBAUM: Q. Okay. You never had the  
23 person assume the position that Officer Keesor described  
24 with respect to the arm, the decedent's arm movement  
25 right before the decedent was shot; is that correct?

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1 A. That's correct.

2 Q. Okay. Do you intend to, to do any work in that  
3 regard?

4 A. To, to have another demonstration like this  
5 where you put people up there and have them, have  
6 somebody --

7 Q. Yeah.

8 A. No, I have no plans to.

9 Q. Okay. Now, is it your understanding that, that  
10 the decedent -- that flashlights were on the decedent  
11 throughout the period of time of the officers, let's  
12 say, the last five minutes before the shooting  
13 occurred?

14 A. There were flashlights on him. The officers  
15 just showed me how they aimed their flashlights. And it  
16 wasn't continuous events. They were moving around. So  
17 it wasn't one static beam on him.

18 Q. On page five of seven you have an opinion,  
19 apparently, that "The physical evidence is consistent  
20 with Officer Alvis' perception of apparent muzzle  
21 flashes from the decedent's location," correct?

22 A. Yes.

23 Q. Is that an opinion you intend to express at  
24 trial in this case?

25 A. Yes.

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1 Q. Okay. And your basis of that opinion is, is  
2 what?

3 A. The dynamics of the event in terms of  
4 flashlights, combination of flashlights, darkened area,  
5 reflective object and muzzle flashes, all intervene  
6 combining during the event.

7 Q. Do you believe that the decedent's metal-rimmed  
8 glasses could, could reflect light in a manner to make  
9 it appear that the decedent was firing gunshots?

10 A. Yes.

11 Q. And what are your qualifications to offer that  
12 opinion?

13 A. I am very experienced with firearms. I'm -- I  
14 think my most recent paper that was published in the  
15 California Association of Criminalist, I was the  
16 coauthor -- excuse me -- California Association of  
17 Criminalist, I was coauthor of a paper on muzzle flash.  
18 And I did some research on muzzle flash, the duration  
19 and what -- I think it's called what people see,  
20 something like that, about what you could see from  
21 muzzle flashes. So I am very familiar with muzzle  
22 flashes.

23 Q. Are you familiar with muzzle flash reflecting  
24 off of officers --

25 A. Yes.



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1 Q. Now, in your view do you have an understanding  
2 -- strike that.

3 My understanding, from your report, is that  
4 according to you Officer Alvis was falling backwards  
5 when she was shooting?

6 A. Ask me that again, please.

7 Q. My understanding from reading your report is  
8 that you have an opinion that Officer Alvis was falling  
9 backwards as she discharged her firearm?

10 A. My opinion is that the physical evidence is  
11 consistent with that description.

12 Q. Okay. From Officer Alvis' position, your  
13 understanding of Officer Alvis' testimony is that she  
14 never saw the decedent's right hand; is that accurate?

15 A. That's my understanding, yes.

16 Q. All right. And Officer Alvis, in fact, fired  
17 -- do you have an understanding that Officer Alvis fired  
18 before she could see the decedent's right hand?

19 MR. LOEBS: Objection. It's argumentative and  
20 it assumes facts not in evidence. And it's vague and  
21 ambiguous.

22 THE WITNESS: I'm a little confused. You  
23 previously stated that she couldn't see -- she stated  
24 that she couldn't see his right hand.

25 MR. NISENBAUM: Q. Right.

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1       A.     So she couldn't see his right hand. That's her  
2 statement.

3       Q.     Okay. And from, from her position, if the  
4 decedent's right arm was raised, she would be in a  
5 position to see it, correct?

6       A.     No.

7       Q.     And let's go back to I think it was L, L1 and  
8 L2.

9             So at no point, from looking at L1, at no point  
10 would Officer Alvis be able to see the decedent's right  
11 arm; is that correct?

12       A.     Well, first of all, depending on which side of  
13 the duct she is looking at, if she is on the right side  
14 or left side, and then depending on how he raised his  
15 right arm, it's certainly possible that she didn't see  
16 -- she could not see his right hand. Depends on how he,  
17 how he raised it and where she -- and where her head was  
18 at the moment.

19       Q.     Okay. It is your understanding that Officer  
20 Keesor, when Officer Keesor fired his gun, it was after  
21 the decedent had allegedly raised his right arm and  
22 allegedly pointed an object, correct?

23             MR. LOEBS: I object. That misstates his  
24 testimony; assume facts not in evidence. It's  
25 argumentative.

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1 THE WITNESS: My understanding is that Officer  
2 Keesor stated that he fired after he saw the decedent  
3 bring his right arm up with an object in it.

4 Does that answer your question?

5 MR. NISENBAUM: Q. Yes, it does.

6 A. That's my understanding.

7 Q. Do you have an opinion as to which officer  
8 fired first?

9 A. Not from physical evidence, no.

10 Q. Okay. And from the testimonial evidence, do  
11 you have an opinion as to which officer fired first?

12 A. I'm not sure if they are sure who fired first.  
13 But I don't have an opinion on it.

14 Q. Okay. And you don't intend to offer an opinion  
15 on that subject, do you?

16 A. I, I might have reviewed Officer Keesor's  
17 statement and -- yeah, all the officers' statements.  
18 But Keesor may have stated that he fired first. I don't  
19 remember.

20 Q. Now, is the physical evidence consistent with  
21 Alvis' perception of apparent muzzle flashes consistent  
22 with light from reflecting off of the decedent's  
23 glasses?

24 A. Yes.

25 Q. And it's also consistent with light reflecting



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1 off of a watch that he had?

2 A. Yes.

3 Q. And you don't need to have actual muzzle  
4 flashes to have that reflection; is that right?

5 A. That's correct.

6 Q. And now you have an opinion here on page five  
7 of seven, The bullet that caused wound "N" in the left  
8 forearm first struck and perforated a wooden membrane  
9 before contacting the decedent?

10 A. A wooden member.

11 Q. A wooden member before contacting the decedent.  
12 Do you know what it struck?

13 A. I believe one of the wooden members.  
14 You asked me which one?

15 Q. Yeah.

16 A. No, I don't know which one.

17 Q. Did you actually observe a damage to a wooden  
18 member?

19 A. It was several, yes.

20 Q. Okay.

21 MR. LOEBS: Ben, just how long do you think you  
22 might be?

23 MR. NISENBAUM: Maybe 20 minutes or relatively  
24 close.

25 MR. LOEBS: Do you mind if I just take a quick

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1 five-minute break?

2 MR. NISENBAUM: Then we will call it 25  
3 minutes.

4 MR. LOEBS: Yeah. I have to make a phone call.

5 MR. NISENBAUM: Okay.

6 (WHEREUPON, a brief recess was taken.)

7 MR. NISENBAUM: Q. Now, do you know whether a  
8 person seated in the decedent's position would have been  
9 able to have had the same difficulty in viewing Officer  
10 Alvis that Officer Alvis had from the decedent?

11 A. Well, I could say there was certainly not a  
12 clear view. They had different perspectives because of  
13 certain objects closer to them, so. And someone seated  
14 in the decedent's location would have -- would not have  
15 a clear view of Officer Alvis.

16 Q. Okay. And does it make a difference that the  
17 flashlight is being shined at the decedent to, to a  
18 person in the decedent's position?

19 A. Would that hinder his view?

20 Q. Yes.

21 A. Oh, yes, it could, yes.

22 Q. Would it cause glare?

23 A. Yes.

24 Q. And if the person is wearing glasses, do you  
25 know if that glare would be increased?

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1       A.    I don't know if it makes much of a difference  
2   in terms of the glare.  But if the flashlight is held in  
3   front of Officer Alvis' face, it would be hard for him  
4   to see her face.

5       Q.    And a person in Officer Keesor's position,  
6   would it be difficult if Officer Keesor was shining a  
7   flashlight -- strike that.  A person and Officer Keesor  
8   were shining, were shining a flashlight at the decedent,  
9   would it be difficult for a person in the decedent's  
10  position to see Officer Keesor?

11       A.    To see his face perhaps a flashlight was next  
12  to his face, it would, it would hinder his view, yes.

13       Q.    And it would hinder the view of his body as  
14  well, correct?

15       A.    It could.

16       Q.    Now, the only sources of light that you are  
17  aware of in the attic on the night of June 6, 2006,  
18  during the subject incident, aside from any shots that  
19  may have been fired were the officers' flashlights; is  
20  that correct?

21       A.    There were some and there are still some vents  
22  which allow lights, which allow light to come in.  It's  
23  not clear to me how much light there was but, you know,  
24  the time of the shooting, but I believe there was some  
25  ambient outside lights that could have lit through.



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1 But, essentially, it was, it was a very dark area.

2 Q. And the light from that could have lit through,  
3 would it make a difference if it was daytime or  
4 nighttime?

5 A. Yes.

6 Q. And there would be a lot less light bleeding  
7 through, if it were nighttime, correct?

8 A. Yes.

9 Q. And you understand that this incident of the  
10 shooting occurred at night?

11 A. Yes, but there was some, still some ambient  
12 light. But I, also, I covered up those vents for, for  
13 my experiment.

14 Q. Okay. Do you intend to offer any opinion with  
15 respect to the officers' ability to retreat in the attic  
16 of 2 Garces Drive?

17 A. To the extent that I am familiar with -- I  
18 don't comment on police practices. But to the extent  
19 that I am aware that there is no -- there is nothing in  
20 that attic that would protect an officer from a gunshot.  
21 There is nothing you could hide behind that would stop a  
22 bullet.

23 Q. How about with respect to the layout of the  
24 attic, itself, in terms of the officer's movement  
25 backwards.

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1 MR. LOEBS: Objection.

2 That was not a question. It's just a  
3 statement.

4 THE WITNESS: I'm not sure what you are asking.

5 MR. NISENBAUM: Q. Well, I was asking about  
6 it. That was a question.

7 How about, well, you mentioned something about  
8 the officers being protected from being shot, correct?

9 A. I just said there is nothing, if I am asked,  
10 there is nothing in the attic that would stop a bullet  
11 that the officers could hide behind.

12 Q. Right. I guess my question is with respect to  
13 -- well, strike that question.

14 You say that "The injury sustained by Officer  
15 Alvis is consistent with having been caused by a  
16 ricocheting bullet fragment or other small object"?

17 A. Yes.

18 Q. And what is that based on?

19 A. That's based on many years of experience with  
20 bullet injuries, bullet fragment injuries. I have been  
21 struck many times by bullet fragments at shooting  
22 ranges. And by my study of wound ballistics and, also,  
23 my knowledge of what happens to a bullet striking wood  
24 like these joists and vertical members and beams. And  
25 the fact that the jackets are often, the bullet jackets

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1 are often chipped off the lead core and go flying  
2 different directions. The type of injury she sustained  
3 is consistent with a bullet fragment injury.

4 Q. How far did bullet fragments fly from the type  
5 of guns the officers were using?

6 MR. LOEBS: Objection. Incomplete hypothetical  
7 and vague.

8 THE WITNESS: There is a great variation,  
9 depending on what they had of a steel and what's most  
10 important is the mass of the fragment, how heavy, heavy  
11 it is, the further it can fly.

12 MR. NISENBAUM: Q. To your knowledge, the  
13 abrasion to Alvis' ear, could that have been caused by  
14 something other than, other than a fragment?

15 A. Yes.

16 Q. Aside from the officers' testimony, can you  
17 tell independently what caused the injury to Alvis',  
18 Officer Alvis' ear?

19 A. Only that it's consistent with a bullet  
20 fragment. That's all I can say.

21 Q. It's consistent with, with something else, too,  
22 correct?

23 A. It could be.

24 Q. Okay. And what is your understanding of when  
25 Officer Alvis was first observed bleeding?



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1 A. At the scene there were descriptions, the  
2 reports interviews from officers at the scene, described  
3 her injury. And then she was treated at the, at the  
4 General Hospital. I forget where, where it was. But it  
5 was a report generated.

6 Q. Do you recall, do you recall officers at the  
7 scene testifying in depositions who said that they  
8 observed no injuries to Officer Alvis?

9 A. I don't remember.

10 Q. And I am talking at 2 Garces Drive.

11 A. Yes, I don't remember one way or the other.

12 Q. Okay. Do you recall what officers -- or strike  
13 that.

14 Do you recall who said they observed an injury  
15 to Officer Alvis at the scene?

16 A. I do not.

17 Q. Okay. You said "The eyeglass case can produce  
18 a loud sound which could be reasonably interpreted as a  
19 gunshot"?

20 A. Yes.

21 Q. And is that based on your experience hearing  
22 guns fire?

23 A. Yes.

24 Q. Okay. Now, I am not certain from your notes,  
25 but it looks like that there were some measurements in

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1 STATE OF CALIFORNIA )

2 ) ss.

3 COUNTY OF SANTA CLARA )

4

5 I hereby certify that the witness,  
6 ALEXANDER JASON , in the foregoing deposition appeared  
before me, BARBARA J. BUTLER, a Certified Shorthand  
Reporter and a disinterested person.

7

8 Said witness was then and there at the time  
and place previously stated by me placed under oath to  
9 tell the truth, the whole truth and nothing but the  
truth in the testimony given on the date of the within  
deposition; that the deposition is a true record of the  
witness' testimony as reported by me.

10

11 The testimony of the witness and all  
questions and remarks requested by Counsel was reported  
12 under my direction and control, caused to be transcribed  
into typewritten form by means of Computer-Aided  
Transcription.

13

14 I am a Certified Shorthand Reporter licensed  
by the State of California, and I further certify that I  
15 am not interested in the outcome of the said action, nor  
connected with, nor related to any of the parties in  
said action, nor to their respective counsel. I am not  
16 of counsel or attorney for either or any of the parties  
to the case named in the within caption.

17

18 IN WITNESS WHEREOF, I have hereunto affixed  
my signature this 4th day of June, 2008.

19

20

21

BARBARA J. BUTLER  
Certified Shorthand Reporter  
California License Number 5604

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